

Issue of Securities in dematerialised form by Private Limited Companies

- Date of Notification : October 27, 2023
- Date of Commencement : October 27, 2023
- Issued by : Ministry of Corporate Affairs (MCA), Government of India
- Relevant Rules : The Companies (Prospectus and Allotment of Securities) Rules, 2014 as amended vide The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 notified on October 27, 2023 (“Rules”)
- Applicability : to all Private Limited Companies (other than Small Companies)
- Type of Securities covered : All types of Securities in terms of Section 2(h) of The Securities Contracts (Regulation) Act, 1956.
- New Provisions [Rule 9B of the Rules] :
 - a. Every private company, *other than a small company*, which as on last day of a financial year ending on or after 31st March, 2023 is not a small company as per audited financial statements for such financial year, shall within eighteen (18) months of closure of such financial year -
 - (i) issue the securities only in dematerialised form; and
 - (ii) facilitate dematerialisation of all its securities,

in accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

b. Every such private company making any :

- i) offer for issue of any securities; or
- ii) buyback of securities; or
- iii) issue of bonus shares; or
- iv) rights offer

after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its :

- i) promoters,
- ii) directors, and
- iii) key managerial personnel

has been dematerialised in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

c. Every holder of securities of such private company :

- (i) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or
- (ii) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.

d. The provisions of sub-rules (4) to (10) of Rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule

e. The provisions of this rule shall not apply in case of a Government company.

➤ Analysis of salient features of the New Provisions :

- a. The provisions are in line with the amendment carried out in Section 29 of the Companies Act, 2013 vide The Companies (Amendment) Act, 2019.
- b. It is applicable to all Private Limited Companies including companies registered under Section 8 of the Companies Act, 2013 (erstwhile Section 25 of the Companies Act, 1956) and limited by shares. However, it is not applicable to Small Companies unless the said Small Company is not a subsidiary of any Public Limited Company.
- c. It is applicable to all types of Securities, viz, shares, stocks, bonds, scrips, debentures, debenture stock, derivatives, units or any other instrument issued by any collective investment scheme to the investors in such schemes, security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, units or any other such instrument issued to the investors under any mutual fund scheme, Government Securities, etc.
- d. Such Private companies will be required to avail the services of RTA for obtaining ISIN facility from the service provider (NSDL/CDSL).
- e. Such Private companies may also require to alter its Articles of Association to make provision for issuance and effecting transfer of shares in demat mode only.
- f. However, requests for share transmission, share transposition, duplicate issue of shares, change of nominee, split/consolidation, demat/remate requests can be processed by these Private companies in usual existing mode.
- g. The shares cannot be issued to any existing shareholder in demat mode unless all its existing shares are also in demat mode.

- h. Such Private companies are required to file half yearly Form PAS-6 with ROC, duly certified by a Practicing Company Secretary.
- i. Share Transfer stamp need to be paid on-line through NSDL mechanism.
- j. SEBI can frame regulations/directions for such type of Companies,
- k. The Company will have to comply with :
 - i) SEBI (Depositories and Participants) Regulations, 1996;
 - ii) SEBI (Registrar to an Issue and Share Transfer Agents) Regulations, 1993
- l. The shareholders of such Private companies may raise their grievances related to this aspect with IEPF Authority and the said Authority has been empowered to deal with it and may take action against DP, Company and its RTA with consultation with SEBI.

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